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SUPREME COURT, U.S.

79-5465

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1979

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VASIL M. MARKOFF,)

Appellant,)

v.) MOTION TO DISMISS

AMERICAN HERITAGE LIFE INSURANCE, a Florida corporation, RENEE SADLO and SUSAN FRANCIS,)

Respondents.)

Respondent American Heritage Life Insurance Company moves the Court for an order dismissing Appellant's appeal pursuant to the provisions of SCR, Rule 16(b).

The normal and usual method of prosecuting a civil appeal is through counsel employed by the party appealing.

An economic problem arises when the party appealing is an indigent. The appellate court could deal with this problem in one of three ways:

1. The court could appoint counsel to represent the indigent on appeal;
2. The court could allow an appeal in proper person; or
3. The court could disallow the appeal in proper person and decline to appoint counsel.

It is clear that the Nevada Supreme Court does not permit

appeals in proper person. NRAP, Rule 46(b) clearly so provides.

It is not clear from the record in this case whether the Nevada Supreme Court would appoint counsel, or decline to appoint counsel. Appellant Markoff never requested that counsel be appointed. In a previous appeal prosecuted by Appellant Markoff before the Nevada Supreme Court, counsel was appointed by the Supreme Court to represent Mr. Markoff. Markoff v. New York Life Ins. Co., 92 Nev. 268, 549 P.2d 33? (1976). The Nevada Supreme Court, in fact, appointed the same counsel that appears from Mr. Markoff before this Court, i.e. Appellant's son, Daniel Markoff.

In the present action, Appellant Markoff made it clear that he did not desire counsel to be appointed for him; but, rather, insisted upon the right to represent himself before the Nevada Supreme Court (see Exhibit F of Appellant's Jurisdictional Statement).

From every standpoint, it is preferable to have counsel represent an indigent, rather than having the indigent represent himself in proper person. The advantages to the appellant are well recognized. Douglas v. California, 372 U.S. 353, 3b6, 9 L.Ed.2d 811, 83 S.Ct. 841 (1963).

It is of considerable advantage to the court to have both parties represented by counsel. The typical brief of a party appearing in proper person is a confusing,

rambling, inarticulate document which is of little aid to the court in passing upon the issues sought to be raised. The briefs of appellate counsel are of great use to the court in presenting the arguments with accuracy, brevity and clarity. See opinion of Justice Douglas in Ross v. Moffitt, 417 U.S. 600, 621, 41 L.Ed. 341, 357, 94 S.Ct. 2437 (1974).

Appointment of counsel for an indigent prevents an unfairness to the indigent's adversary. Appellate courts tend to give special consideration to the arguments of persons not represented by counsel. See opinion of Justice Clark in Douglas v. California, supra, at page 366.

Frequently, appellate courts appoint a law clerk to act as "counsel" for the party appearing in proper person. This method of representation is often unfair to the party represented by counsel. The arguments of the law clerk do not appear in any brief, but, rather, in an intercourt memorandum, and opposing counsel never has an opportunity to answer the arguments raised by the law clerk. From every standpoint, it is better to have appointed counsel for civil indigents, than to have the indigents representing themselves in proper person.

Appellant Markoff does not raise a substantial Federal question in this appeal. He is not arguing for the right of indigents to have an effective appeal in civil cases. He is arguing for the right of indigents

to inflict amateur briefs upon the court.

Respectfully submitted,

BECKLEY, SINGLETON, DE LANOY &
JEMISON, Chartered

By _____
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AMERICAN HERITAGE LIFE
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